Supreme Court, U. S.
FILED
OCT 6 1977
MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States

October Term, 1977

No. 77-366

BLINDER ROBINSON & COMPANY, INC.,

Petitioner,

vs.

HALPERT OBERST & COMPANY,

Respondent.

REPLY BRIEF FOR PETITIONER

IRWIN S. LAMPERT
Attorney for Petitioner
252 Main Street
Goshen, New York 10924
(914) 294-8814

096 LUTZ APPELLATE PRINTERS, INC.
Law and Financial Printing
South River, N.J. (201) 257-6850 New York, N.Y. (212) 840-9494 Philadelphia, Pa. (215) 563-5587 Washington, D.C. (202) 783-7288

TABLE OF CONTENTS

Page

Petitioner's Reply Brief 1

Conclusion 2

APPENDIX

Excerpts From the Trial Record 1a

In The

Supreme Court of the United States

October Term, 1977

No. 77-366

BLINDER ROBINSON & COMPANY, INC.,

Petitioner,

-against-

HALPERT OBERST & COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITIONER'S REPLY BRIEF

Respondent, Halpert, Oberst & Company, alleges that the issues now raised by the petitioner are totally without merit. The trial record clearly discloses that the agreement was put into evidence and filed with the National Association of Security Dealers.

The appendix, attached hereto, are excerpts from the trial record which supports petitioner's contention. In his testimony, Meyer Blinder stated:

"We, as a firm, are registered with Executive Securities. We are registered with the NASD and the SEC with Executive Securities as their sales agent."

CONCLUSION

For the foregoing reasons, it is clear that the reasons for granting the writ, as set forth in the petition, are further supported herein and that the petition for the writ of certiorari should be granted.

Respectfully submitted,

s/ Irwin S. Lampert
Attorney for Petitioner

APPENDIX

EXCERPTS FROM THE TRIAL RECORD

* * *

Blinder-Direct [A37, 31]

A Six years.

Q Now, do you know who Executive Securities Corporation is?

A Yes.

Q Did you have a deal with Executive Securities Corporation?

A Yes.

Q Was that an oral deal or a written deal?

A Written deal.

Q I show you this document and ask you whether or not this is the written contract that you have with Executive Securities?

A Yes.

Q Who's that signed by?

A Myself as president and Richard Battoli, the president —

THE COURT: Richard who?

THE WITNESS: Richard Battoli of Executive Securities.

THE COURT: Let it be marked for identification.

MR. RUDENSTEIN: I'm going to offer it in evidence, your Honor.

MR. MASTERSON: Let me see it.

Where's the original of this document, sir?

• • •

Blinder-Cross

[A56, 50] registered broker dealer, so we're salesmen, and they have no salesmen. They are a wholesale house. They make markets and everything else. All we have is salesmen. The salesman gets a commission working for Executive Securities.

Q But all they get out of this transaction, where they're supposed to be the principal and they're supposed to pay for the bonds and they're supposed to take risks, all they're getting is $8 on each side of the transaction?

A They take no risk. The customer is buying it. He pays for the securities in a seven-day period. They pay for it in something like a 15-day period. There is no risk.

Q Well, all they're —

A And all clearing arrangements, Merril Lynch as clearers for Bache and Company would only pay them a fee for brokerage of some $3 or $4 for the transaction.

Q Isn't Executive Securities merely doing a payment for this transaction?

A No. They assume —

Q Doing the bookkeeping?

A Not even the bookkeeping. The regulation states if a broker dealer was in business for himself, he has to have a minimum $50,000 in capital. As clearing agent, all you have to have is $5,000 in capital. Therefore, if we were a business, we could not handle any customer accounts. We [A57, 51] could not handle their money. That's the reason you use a clearing agent. So you clear through another broker for that reason, if his capital is better than yours.

Q Now, this sale was made ultimately to the owner of the stock by a man named Silverman?

A That's correct.

Q And he was —

THE COURT: Bonds, you mean.

MR. MASTERSON: Excuse me.

THE COURT: Bonds. You said stock.

Q By Silverman, right?

A That's correct.

Q He was on your payroll?

A No. That's not. He works on a commission. He's registered as an RR with us.

Q With you?

A That's correct.

Q Not with Executive Securities?

A That's correct. We, as a firm, are registered with Executive Securities. We are registered with the ASD and the SEC with Executive Securities as their sales agent.

THE COURT: Would you know whether Executive did clearing for other brokers besides — for other firms besides —

THE WITNESS: Yes, your Honor.

[A58, 52] THE COURT: — Blinder?

THE WITNESS: Yes, your Honor.

THE COURT: They did?

THE WITNESS: They cleared for 15 firms.

THE COURT: Members of the stock exchange or not?

THE WITNESS: No.

THE COURT: But members of the clearing house?

THE WITNESS: No. Members of the OTC. You're talking about who they cleared for?

THE COURT: Right.

THE WITNESS: They were brokers, small brokers like myself.

THE COURT: Were they members of the Board?

THE WITNESS: No. They were members of the Boston Stock Exchange.

THE COURT: Members of the clearing house?

THE WITNESS: No. Members of the NESD, and so are we.

THE COURT: Registered, right?

THE WITNESS: Yes. We were registered, and that's why they could take our account and —

THE COURT: Let me ask you this: Registered with ASD as what?

THE WITNESS: As broker dealers.

* * *